



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Consider Refinements to and Further Development of the Commission's Resource Adequacy Requirements Program.

Rulemaking 05-12-013
(Filed December 15, 2005)

**COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES ON THE DRAFT OPINION ON LOCAL
RESOURCE ADEQUACY REQUIREMENTS**

I. INTRODUCTION

Pursuant to the Commission Rules of Practice and Procedure Rules 77.7 and 77.2, the Division of Ratepayer Advocates (DRA) submits the following comments on the Draft Decision of Administrative Law Judge (ALJ) Mark Wetzell, entitled, "Opinion on Local Resource Adequacy Requirements" (hereafter, the "Phase I DD").

II. COMMENTS

In general, DRA supports the Phase I DD, as a very reasonable approach toward the establishing and implementing local resource adequacy requirements for load-serving entities (LSEs). DRA agrees that the Commission must move forward with implementation of the Local RAR program in 2007, and that for this decision, the current record provides an adequate basis for the Commission to rely upon. Many issues remain to be resolved in Phase II of this proceeding, and DRA looks forward to continued participation in Phase II, where these issues will be addressed, and the Local RAR program will be further refined.

DRA offers the following comments in order to point out limited differences in view with the Phase I DD, to suggest additional factors for

consideration, and to request clarification on a few of the subjects covered in the DD.

1. Policy Objectives for Local RAR (DD, section 3.1.)

The DD reiterates the Commission's determination that LSE-based procurement of the capacity needed in constrained areas will be more effective in promoting RAR goals than CAISO procurement through its RMR process. It states that LSE-based procurement is more likely to yield "cheaper and more environmentally friendly alternatives to RMR contracts." (DD, p. 12, quoting D.05-10-042.) DRA agrees with the premise that LSE-based procurement is more likely to accomplish these results. However, for this potential to be realized, the Commission must actively pursue procurement policies consistent with the major policy goals that the Commission has articulated. For example, the LSEs must be directed to develop diversified portfolios that integrate demand-side resources, and diverse fuel sources, including renewables, on the supply side.

2. 2007 LCR Study (DD section 3.2.1)

DRA agrees that the CAISO, as the grid operator, is best suited to provide the technical analysis that the Commission will rely upon in determining the local capacity requirements. Therefore, it is reasonable for the Commission to rely on the ISO's most recent study in setting reliability requirements for 2007. As DRA and others point out in their Reply Comments on the 2007 LCR Study,¹ consumers would benefit from an additional vetting of focused technical and disclosure issues. DRA believes that an additional workshop held within 15 days from the service of the final decision, with a focused agenda on the 2007 LCR study, will be helpful. DRA agrees that, to the extent possible, the CAISO should incorporate all corrections and transmission solutions that have been established prior to the CAISO's cutoff date (which has not yet been determined), that would lower the LCR level, without lessening reliability.

¹ See Reply Comments of the Division of Ratepayer Advocates on the 2007 Local Capacity Technical Analysis Report by the California Independent System Operator ("DRA 2007 LCR Study Reply Comments"), pp. 1-2.

DRA suggests that, at a minimum, the following issues be considered at the additional workshop:

- Identifying whether or not the NERC/WECC standards have been represented too conservatively in model assumptions;
- Incorporating all opportunities for cost-effective operational solutions for each local area;
- Discussing the implications of more sub-areas on over-procurement;
- Providing a comprehensive list of contingencies for areas and load pockets

In short, DRA supports the reliance by the Commission on the current CAISO study, but recommends that the costs associated with the assumptions be explored further in Phase II, particularly as they relate to creating additional CAISO backstop procurement.

3. 2007 LCR Study - Reliability Options (DD section 3.2.2.1)

In the LCR study it is not clear which performance criteria, Option 1 or 2, is most reasonable without the benefit of knowing what the probabilities are for the kinds of loss events for each criteria or what the costs are for each criteria.

Inherent in DRA's support for the N-1-1 Criteria is the recognition that it reflects the planning criteria for loss of a transmission and a generation facility. Given the large RAR capacity adopted by the Commission for the CAISO to call upon, the cost of having to plan for an N-2 loss of two generation facilities is going to be different than planning for a consecutive N-1-1 loss of transmission and a generation facility. The Commission should require that the next LCR study provide more information about reliability criteria and to keep open the issue of N-1 versus N-2 criteria.

4. Load Forecast (DD section 3.2.2.2)

DRA supports the Commission's choice to use a 1 in 10 year summer peak load forecast.

5. Transmission Improvements (DD section 3.2.2.5)

DRA generally agrees with this section of the DD.

6. LCR Study Process for 2008 and Beyond. (DD section 3.2.3)

In DRA's view, it is not entirely clear from the DD how the LCR process will be integrated with the grid planning process. DRA agrees that there would be benefits to a probabilistic approach to the LCR study, and would support such a study if it were economically feasible, recognizing that such a study would take additional time and resources to prepare.

7. Local RAR Program Design Issues (DD section 3.3)

The DD indicates that for 2009 and beyond, the Commission contemplates delegating the annual determination of LCRs to Energy Division staff, and asks for recommendations on implementation. DRA tentatively supports the concept of delegating the authority to determine LCRs to Energy Division staff, in consultation with CAISO staff, provided that the Commission provides clear policy direction as to how the determination will be made in the Phase II Decision. DRA also notes that parties should be allowed an opportunity to comment on future LCR studies performed by the CAISO.

8. Compliance Demonstrations (DD section 3.3.5)

DRA supports the annual compliance filing approach in the DD, recognizing that the Commission needs a simple and manageable approach which allows sufficient time for LSEs and the CAISO to engage in additional procurement, if necessary.

9. Counting Resources/RMR Resources (DD section 3.3.7)

DRA supports counting RMR Condition 1 and Condition 2 units for 2007, until a full transition can be made to reliance on LSE procurement. Regardless of LSE procurement, there is likely a need for continued CAISO use of RMR to contract for ancillary services.

10. Dispatchable Demand Response Resources (DD section 3.3.7.2)

The Draft Decision recognizes that dispatchable demand response resources should be allowed to count for Local RAR showing for 2007, but then states the record does not provide an adequate basis upon which to order SCE to produce

data for 2007. DRA believes there is a clear ratepayer interest in having dispatchable demand recognized in the 2007 study and therefore does not believe it appropriate to leave to SCE determination of when it is appropriate to provide a mapping of curtailable load to local areas. Rather, the Commission should adopt a finding of fact and should order SCE to provide such information in the following manner.

Finding of Fact: It is in its ratepayers interest that SCE make available dispatchable demand response resources to the CEC for it to be counted SCEs 2007 RAR.

Ordering Paragraph: SCE shall within nine months of this order provide to the California Energy Commission and a notification of such provision to the director of the Energy Division, a mapping of demand response program participants and their associated curtailable load to each local area.

11. Evaluation of Compliance Demonstrations (DD section 3.3.8).

DRA generally agrees with the approach in the DD for compliance demonstrations.

12. The IOUs' Transfer Payment Proposal (DD section 3.3.9.)

The IOUs have proposed a \$24 per KW-year transfer payment mechanism to address the situation where the local area as a whole has sufficient resources, yet individual LSEs may be long or short in meeting their individual local procurement obligations. The DD rejects PG&E's proposal, the details of which have not yet been worked out, and as being administratively complex and burdensome on ED staff to administer. In addition, the DD finds that it has not been established that the transfer payment mechanism will encourage bilateral contracting. DRA agrees that PG&E's transfer-payment mechanism should not be adopted for 2007.

13. Enforcement and Penalties (DD section 3.3.10).

DRA agrees that a penalty regime is necessary to deter non-compliance with the Local RAR program, and to discourage undue reliance on CAISO backstop. While DRA agrees with the underlying rationale that penalties should bear some proportion to the harm caused by failure to meet Local RAR, DRA suggests that a fine based on a straight percentage of replacement capacity is problematic. The DD proposes a penalty of 300% of the cost of new capacity for failure to meet System RAR and a 100% penalty for Local RAR, with penalties limited to 300% for a failure to meet both System and Local RAR.

As observed in DRA's earlier comments in this proceeding,² Public Utilities Code section 2107 and 2111 authorize the Commission to impose fines in the range of \$500 to \$20,000 per offense; each violation is a separate offense, as is a continuing violation. (Public Utilities Code section 2108).³ As this Commission observed in its Opinion on Resource Adequacy Requirements, (D.05-10-042 at p. 91), the Commission may be guided by the penalty factors set forth in D.98-12-075 in determining whether to assess a penalty, and in what amount. Energy Division staff can make recommendations to the Commission for penalties for failure to meet local procurement obligations, based on the D.05-10-042 factors, and other relevant factors such as whether the LSE paid for backstop procurement.

As DRA observed in its previous comments, the Commission could stay within established penalty authority by expressing the proposed penalty amount in terms of a 100 kW/year, using a range of \$50-\$200 per kW/yr. In DRA's view, the existing statutorily authorized penalties, together with D.98-12-075, provide sufficient flexibility to the Commission to determine the appropriate penalty under

² See Post-Workshop Comments of the Division of Ratepayer Advocates on Local Resource Adequacy Requirements, Tradable Capacity Product Issues, Implementation Issues and Other Issues filed April 21, 2006 (section I.B.9).

³ DRA observes that the Commission has authority to suspend or revoke the operating authority of an electric service providers (ESP) under limited circumstances, including the making of material misrepresentations to customers, dishonesty or fraud, or where an ESP is incapable of providing electric services offered. (Public Utilities Code section 394.25.)

the circumstances, and will avoid legal challenges that would delay enforcement efforts.

DRA tentatively agrees that LSEs should be exempt from penalties where the local area is fully resourced. However, DRA questions whether in all cases, this will arise where an LSE had “good cause to believe that the local area in question would be long” and not due to “gamesmanship.” (DD at p. 64.) Since it may be premature to reach this conclusion, the Commission should clarify that it would investigate and may issue an Order Instituting Investigation, seeking penalties if market manipulation or gamesmanship is established, even if the local area is fully resourced.

14. Waivers (DD section 3.3.12).

DRA supports the waiver process outlined in the DD, whereby an LSE could seek a waiver from Commission-imposed penalties (but *not* CAISO backstop procurement costs), if it has made a fair and good faith attempt to solicit bids for RAR capacity, but received no bids under a \$40 per kW-year. The DD notes that Energy Division staff will be delegated the ministerial aspects of the waiver process, which DRA believes should include investigating the underlying facts and making recommendations to the Commission for a final determination as to whether to accept the waiver request, or deny the waiver and seek imposition of penalties by way of an Order Instituting Investigation or Order to Show Cause.

In the alternative, the Commission could consider a streamlined approach whereby the Commission would adopt objectively measurable waiver criteria. Applying such criteria, Energy Division staff could grant provisional waivers, subject to possible later action by the Commission. Delegating compliance with such objective criteria appears to be an appropriate delegation of a ministerial function.

DRA requests that the DD provide additional clarity as to how the waiver process will work with the exemption from penalties in Section 3.3.10 of the DD. DRA assumes that no LSE will know at the time it makes its annual Local RAR

compliance showing whether or not a Local Area is fully resourced, so the exemption will have to be applied after the compliance showing is made (and cannot form the basis for a waiver request.) If an LSE did not make a good faith attempt to solicit bids, or refused a reasonable bid, and therefore would not likely be eligible for a waiver, would it still be exempt from penalties if the area later turns out to be fully resourced?

III. CONCLUSION

With the above comments and clarifications, DRA supports the Phase I DD as an important step in the Commission's goal of establishing local resource adequacy requirements.

Respectfully submitted,

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June 19, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE DRAFT OPINION ON LOCAL RESOURCE ADEQUACY REQUIREMENTS**” in **R.05-12-013** by using the following service:

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Executed in San Francisco, California, on the **19th** day of **June, 2006**.

/s/ Rebecca Rojo

Rebecca Rojo

N O T I C E

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